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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 111104664-2106-02]

RIN 0648-BB61

Shrimp Fisheries of the Gulf of Mexico and South Atlantic;  
Revisions of Bycatch Reduction Device Testing Protocols

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the framework procedures for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Gulf FMP) and the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (South Atlantic FMP), this rule certifies two new bycatch reduction devices (BRDs) for use in the Gulf of Mexico (Gulf) and South Atlantic shrimp fisheries, and revises a harvesting restriction for shrimp vessels fishing in Federal waters of the Gulf. Both BRDs represent modifications to the Composite Panel BRD, which is provisionally certified through May 24, 2012. This rule incorporates these BRDs into the list of allowable BRDs, and provides technical specifications for the construction and subsequent legal enforcement of these BRDs.

Additionally, this rule reduces the shrimp effort threshold for the Gulf shrimp fishery. The intended effect of this final rule is to improve bycatch reduction efforts in the Gulf and South Atlantic shrimp fisheries, provide greater flexibility to the industry, reduce the potential adverse social and economic impacts to fishing communities of previous restrictions, and meet the requirements of National Standard 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) which requires, to the extent practicable, the minimization of bycatch and bycatch mortality.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER], except for the amendments to § 622.41(g)(3)(ii) and Appendix D to part 622, paragraph G., which are effective May 25, 2012.

ADDRESSES: Documents related to this final rule may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/GulfShrimp.htm>.

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SUPPLEMENTARY INFORMATION: The shrimp fishery in the exclusive economic zone (EEZ) of the Gulf is managed under the Gulf FMP prepared by the Gulf of Mexico Fishery Management Council (Gulf Council), and the shrimp fishery in the EEZ of the South Atlantic is managed under the South Atlantic FMP prepared by the

South Atlantic Fishery Management Council (South Atlantic Council). The Gulf and South Atlantic FMPs are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

On January 9, 2012, NMFS published a proposed rule to certify two new BRDs for use in the Gulf and South Atlantic shrimp fisheries, and revise a harvesting restriction for shrimp vessels fishing in Federal waters of the Gulf and requested public comment (77 FR 1045). On January 23, 2012, NMFS published a correction to the proposed rule to correct an error in the preamble, which stated that the "Expanded Mesh BRD" would be decertified for use by the Gulf shrimp fishery after May 24, 2012, when it should have stated the "Extended Funnel BRD" would be decertified for use in the Gulf shrimp fishery after May 24, 2012 (77 FR 3224). The proposed rule outlined the rationale for the actions contained in this final rule and is not repeated here.

This final rule certifies two new BRDs for use in the Gulf and South Atlantic shrimp fisheries, namely the Cone Fish Deflector Composite Panel BRD and the Square Mesh Panel (SMP) Composite Panel BRD, and provides technical specifications for the construction of these BRDs. The two BRDs that are currently provisionally certified, through May 24, 2012, namely the Composite Panel BRD and the Extended Funnel BRD (Gulf only),

will automatically be decertified on the date their preliminary certification expires. The Extended Funnel BRD will continue to be certified in the South Atlantic.

This final rule also revises a harvesting restriction for shrimp vessels fishing in Federal waters of the Gulf. In accordance with regulations established when Joint Amendment 14/27 to the Gulf FMP and the FMP for the Reef Fish Fishery of the Gulf (Joint Amendment 14/27) were implemented on February 28, 2008 (73 FR 3117, January 29, 2008), the rate of shrimp trawl bycatch mortality on juvenile red snapper found in the 10 to 30 fathom depth contours, west of Mobile Bay, Alabama, must be reduced by at least 74 percent, compared to the average rate of fishing mortality documented during 2001 through 2003. Joint Amendment 14/27 further documented a direct correlation between shrimp trawl bycatch mortality and shrimping effort, as measured in days fished by shrimp vessels; meaning that shrimping effort, measured in days fished, can be used as proxy for shrimp trawl bycatch mortality rates. Based on data from 2001 through 2003, the benchmark mortality or "F" rate for shrimp trawl bycatch was 0.617. Using days fished as a proxy for bycatch mortality, that F rate corresponds to 82,811 days fished. To comply with Joint Amendment 14/27, the days fished needs to be reduced by 74 percent, to meet the required 74 percent reduction in bycatch mortality. To ensure that the F rate is reduced by 74 percent

to 0.160, the number of days fished in a particular year cannot exceed 21,531 days (i.e., a 74 percent reduction from 82,811 days). To date, the annual shrimping effort has not exceeded the threshold level of 21,531 days, and no closures in the following fishing year have been needed.

Joint Amendment 14/27 also established that this restriction would be relaxed in 2011 by requiring only a 67 percent reduction (not 74 percent) in shrimp trawl bycatch mortality. In accordance with Joint Amendment 14/27, this rule requires that the annual rate of shrimp trawl bycatch mortality must now be reduced by 67 percent, again using shrimping effort as a proxy for mortality. Using effort as measured in days fished as a proxy for bycatch mortality, to reduce mortality by at least 67 percent, the number of days fished cannot now exceed a threshold of 27,328 days. The intent of relaxing this restriction on fishing effort is to benefit the shrimp fleet for its contribution to red snapper recovery, much like increasing allowable catch to the directed fishery as the red snapper stock recovers on its rebuilding trajectory.

#### Comments and Responses

One letter was received commenting on the proposed rule, identifying three issues. These comments and NMFS' responses are presented below.

Comment 1: One of the elements of the Composite Panel BRD

that makes it preferable for use is that it can be constructed within the existing standard turtle excluder device (TED) extension. This allows the TED/BRD manufacturer to install both devices into the same extension of webbing, resulting in labor and material savings. The regulations should allow the BRD webbing extension to consist of the aft portion of a currently legal TED extension with all the components of the BRD otherwise installed, as described, and the openings cut into the existing TED extension, as described.

Response: This final rule does not prohibit installing the Composite Panel BRD designs (Composite Panel BRD, Cone Fish Deflector Composite Panel BRD, and the SMP Composite Panel BRD) within the existing TED extension, provided that the extension material in the aft portion of the TED meets the specifications for the BRD installation as well (i.e., 24 1/2 meshes by 150 to 160 meshes). There is no requirement to cut the TED extension off and sew a complete Composite Panel BRD extension on the shortened TED extension. However, this may be more efficient for some fishers who do not wish to take their TED extensions out of their nets and take them to the net shop to have a new Composite Panel BRD installed. Nevertheless, the BRD can be installed in the TED extension. The portion of the extension that constitutes the BRD extension must be installed no more than 4 meshes from the posterior edge of the TED and the BRD

escape openings must be installed 1 1/2 meshes from the leading edge of the BRD extension. Therefore, if a Composite Panel BRD design is installed in the TED extension, the BRD escape openings must be no more than 5 1/2 meshes from the posterior edge of the grid.

Comment 2: The instructions describing the starting point for attachment of the leading edges of the panels should be changed from "...extension starting 12 meshes up from the bottom center on each side..." to "...extension starting 12-14-16-18 meshes (i.e., 10 percent of the circumference of the extension) up from the bottom center on each side..." This would more accurately keep the opening in the same relative position to the original Composite Panel testing, which was done using a 120-mesh extension, as in the original write-up of the provisional certification of the Composite Panel BRD. Establishing a requirement in terms of percentages instead of meshes would allow for the same opening position orientation in extensions as large as 180 meshes or even 200 meshes. This should also more accurately place the openings in the 150 to 160 mesh extensions.

Response: The Composite Panel BRD regulations, as published February 13, 2008 (73 FR 8219), require that the BRD be constructed with a webbing extension with the dimensions of 24 1/2 meshes by 150 to 160 meshes, not 120 meshes. All configurations of the Composite Panel BRDs were tested with

TED/BRD extensions of 150 to 160 meshes. It is not known what the effect of installing the BRD into an extension of 180 or 200 meshes would have regarding the performance of the BRD.

Therefore, the portion of the extension that forms the BRD should be no more than 160 meshes. Allowing the current provisionally certified Composite Panel BRD to be installed in extensions of 180 to 200 meshes would require additional certification tests with the larger extensions.

Comment 3: The twine size of the currently described webbing extension is not stated in the proposed rule (77 FR 1045, January 9, 2012) for either modification of the Composite Panel BRD.

Response: The current regulations for the provisional certification of the Composite Panel BRD do not specify the twine size for the BRD extension. The purpose of this omission is to allow the Composite Panel BRDs to be installed in the TED extensions. NMFS acknowledges that the construction and installation manual posted on the Southeast Regional Office Web site

(<http://sero.nmfs.noaa.gov/sf/pdfs/Composite%20BRD%20Instructions.pdf>) erroneously specifies a specific twine size for the extension webbing. This error will be corrected in the new construction and installation manuals for the two new modifications of the Composite Panel BRD.



## Changes from the Proposed Rule

The two BRDs whose provisional certification expires May 25, 2012 will still be provisionally certified at the time this final rule takes effect. NMFS prepared the regulatory text in the proposed rule under the assumption that the final rule would be effective on a date concurrent with the expiration of the provisional certification of these two BRDs. However, due to the timing of this final rule, the two provisionally certified BRDS may still be used until May 25, 2012. Therefore, the regulatory text has been revised to include these provisionally certified BRDs through their date of effectiveness.

The effective date for the BRD construction instructions in § 622.41, paragraph (g)(3)(ii), is delayed until May 25, 2012, when the two provisionally certified BRDs expire. Additionally, the effective date for the removal of the description of the Composite BRD in Appendix D to part 622, paragraph G., is delayed until May 25, 2012. Finally, the description of the two new BRDs being certified through this rule are added to Appendix D in part 622, in paragraphs H. and I., instead of paragraphs G. and H., as written in the proposed rule regulatory text.

To improve this rule's clarity, NMFS is adding the number of days fished that result from the 67-percent target reduction of shrimp trawl bycatch mortality on red snapper in § 622.34 (1)(1).

NMFS is also correcting a typo in the description of the two new BRDs being certified through this rule. The term "number" is removed from the first sentence of part 622, Appendix D H.2.a. and I.2.a. The minimum construction and installation requirements for the Cone Fish Deflector Composite Panel BRD and the SMP Composite Panel BRD do not specify a number for the twine size of the stretch mesh, to allow for more flexibility in the construction of these BRDs, therefore the term "number" can be removed from these specifications.

#### Classification

The NMFS Assistant Administrator, Southeast Region, has determined that the actions contained in this rule are necessary for the conservation and management of the shrimp fishery in the Gulf and South Atlantic and that they are consistent with the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding this

certification. As a result, a regulatory flexibility analysis was not required and none was proposed.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 6, 2012

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Alan D. Risenhoover,  
Acting Deputy Assistant Administrator  
For Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.34, the second sentence of paragraph (1)(1) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

\* \* \* \* \*

(1) \* \* \*

(1) \* \* \* The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10-30 fathom area of statistical zones 10-21, compared to the 67-percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001-2003 established in the FMP (which corresponds in terms of annual shrimp effort to 27,328 days fished). \* \* \*

\* \* \* \* \*

3. In § 622.41, paragraph (g)(3)(ii) is removed and reserved and paragraphs (g)(3)(i)(G) and (H) are added to read as follows:

§ 622.41 Species specific limitations.

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(i) \* \* \*

(G) Cone Fish Deflector Composite Panel.

(H) Square Mesh Panel (SMP) Composite Panel.

\* \* \* \* \*

4. In Appendix D to part 622, paragraph G. is removed and reserved and paragraphs H. and I. are added to read as follows:

Appendix D to Part 622--Specifications for Certified BRDs

\* \* \* \* \*

#### H. Cone Fish Deflector Composite Panel.

1. Description. The Cone Fish Deflector Composite Panel BRD is a variation to the alternative funnel construction method of the Jones-Davis BRD, except the funnel is assembled by using depth-stretched and heat-set polyethylene webbing with square mesh panels on the inside instead of the flaps formed from the extension webbing. In addition, no hoops are used to hold the BRD open.

2. Minimum Construction and Installation Requirements. The Cone Fish Deflector Composite Panel BRD must contain all of the following:

(a) Webbing extension. The webbing extension must be constructed from a single rectangular piece of 1 1/2-inch to 1 3/4-inch (3.8-cm to 4.5-cm) stretch mesh with dimensions of 24 1/2 meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24 1/2-mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the TED grid.

(b) Funnel. The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the

funnel. The panels are 2-ply in design, each with an inner layer of 1 1/2-inch to 1 5/8-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1 1/2 meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch

(45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) Cutting the escape opening. There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90 degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back

of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in<sup>2</sup> (1,368 cm<sup>2</sup>). The four escape openings must be double selvaged for strength.

(d) Cone fish deflector. The cone fish deflector is constructed of 2 pieces of 1 5/8-inch (4.1-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 12 inches (30.5 cm) of the posterior edge of the funnel.

(e) 11-inch (27.9-cm) cable hoop for cone deflector. A single hoop must be constructed of 5/16-inch (0.79-cm) or 3/8-inch (0.95-cm) cable 34 1/2 inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of 3/8-inch (0.95-cm) aluminum pipe pressed together with a 1/4-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(f) Installation of the cone in the extension. The apex of the cone must be installed in the extension within 12 inches (30.5 cm) behind the back edge of the funnel and attached in



four places. The midpoint of a piece of number 60 twine (or at least 4-mesh wide strip of number 21 or heavier webbing) 3 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine or webbing must be attached within 5 meshes of the aft edge of the funnel at the center of each of its sides. Two 12-inch (30.5-cm) pieces of number 60 (or heavier) twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the extension webbing to keep the cone from inverting into the funnel.

#### I. Square Mesh Panel (SMP) Composite Panel

1. Description. The SMP is a panel of square mesh webbing placed in the top of the cod end to provide finfish escape openings.

2. Minimum Construction and Installation Requirements. The SMP Composite Panel BRD must contain all of the following:

(a) Webbing extension. The webbing extension must be constructed from a single rectangular piece of 1 1/2-inch to 1 3/4-inch (3.8-cm to 4.5-cm) stretch mesh with dimensions of 24 1/2 meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24 1/2-mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the

TED grid.

(b) Funnel. The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1 1/2-inch to 1 5/8-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1 1/2 meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be

rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) Cutting the escape opening. There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90 degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape

openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in<sup>2</sup> (1,368 cm<sup>2</sup>). The four escape openings must be double selvaged for strength.

(d) SMP. The SMP is constructed from a single piece of square mesh webbing with a minimum dimension of 5 squares wide and 12 squares in length with a minimum mesh size of 3-inch (76-mm) stretched mesh. The maximum twine diameter of the square mesh is number 96 twine (4 mm).

(e) Cutting the SMP escape opening. The escape opening is a rectangular hole cut in the top center of the cod end webbing. The posterior edge of the escape opening must be placed no farther forward than 8 ft (2.4 m) from the cod end drawstring (tie-off rings). The width of the escape opening, as measured across the cod end, must be four cod end meshes per square of the SMP (i.e., a cut of 20 cod end meshes for a SMP that is 5 meshes wide). The stretched mesh length of the escape opening must be equal to the total length of the SMP. No portion of the

SMP escape opening may be covered with additional material or netting such as chaffing webbing, which might impede or prevent fish escapement.

(f) Installation of the SMP. The SMP must be attached to the edge of the escape opening evenly around the perimeter of the escape opening cut with heavy twine.

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